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In re Application of
MARCH, et al.

Application No.: 10/529,917

PCT No.: PCT/GB03/04267

Int. Filing Date: 02 October 2003

Priority Date: 09 October 2002

Attorney Docket No.: 9013-56IP

For: BACTERIOPHAGE-MEDIATED
IMMUNISATION AGAINST HEPATITIS

DECISION ON PETITIONS

UNDER 37 CFR 1.181

AND 37 CFR 1.497(d)

This decision is in response to applicant's "Request to Correct Inventorship Under 37 CFR 1.497(d)" and "Petition Under 35 U.S.C. 1.181 to Reinstate Original Statutory Basis of Filing" filed 31 May 2007 in the United States Patent and Trademark Office (USPTO). Applicant has provided payment of the \$130.00 petition fee for the request under 37 CFR 1.497(d).

BACKGROUND

On 21 December 2006, applicant was mailed a decision informing applicant that the present application was being treated as a U.S. application under 35 U.S.C. 111(a).

On 09 February 2007, applicant was mailed a "Notification of Missing Requirements" (Form PCT/DO/EO/905) informing applicant that the declaration submitted on 11 October 2005 contained an additional inventor versus the published international application. Applicant was afforded two months to respond and advised that this period could be extended pursuant to 37 CFR 1.136(a).

On 31 May 2007, applicant filed the petitions considered herein accompanied by a petition for a two-month extension of time and payment of the appropriate extension fee. The response is considered timely filed.

DISCUSSION

Petition Under 37 CFR 1.181

An examination of the papers filed on 01 April 2005 finds that applicant is correct that the preliminary amendment filed therein did not refer to the present application as a continuation-in-part of an international application, but rather as a continuation-in-part of U.S. application 10/473,664. As such, the preliminary amendment did not represent a conflicting instruction from

the intent to enter the U.S. National stage pursuant to 35 U.S.C. 371 as expressed in the Form PTO-1390 transmittal letter. As such, it is proper to grant applicant's petition under 37 CFR 1.181 to restore the above-identified application to the U.S. National stage entry of international application PCT/GB03/04267.

II. Request Under 37 CFR 1.497(d)

37 CFR 1.497(d) [formally, 37 CFR 1.48] states in part: "If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the international application....applicant must submit:

- (1) a petition including a statement from each person being added or deleted as an inventor that the error in inventorship occurred without any deceptive intention on his or her part;
- (2) an oath or declaration by the actual inventor(s) as required by 37 CFR 1.63;
- (3) the fee set forth in 37 CFR 1.17(h); and
- (4) if an assignment has been executed by any of the original named inventors, the written consent of the assignee in compliance with 37 CFR 3.73(b).

Applicant satisfied all four items listed above and it is proper to grant applicant's request at this time to add Jason Clark as an inventor in the present application.

CONCLUSION

For the reasons above, applicant's petition under 37 CFR 1.181 and request under 37 CFR 1.497(d) are **GRANTED**.

This application has an international application filing date of 02 October 2003 and will be given a date of **11 October 2005** under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

This application is being returned to the DO/EO/US for processing in accordance with this decision.



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